

AGREEMENT

This Agreement is made and entered into this ____ day of May, 2010, by and between Crofts Air Conditioning (“Contractor”), and Washington County (the “County”).

RECITALS

WHEREAS, the County submitted a Request for Proposal to licensed contractors to acquire permits, and provide equipment and/or labor for installation and change out of HVAC units; and

WHEREAS, the Contractor supplied the lowest sealed-bid proposal to the County.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

SPECIFIC TERMS

1. Scope of Work by Contractor.

a. Removal of 34 existing RTU HVAC systems at 4 building locations:

(1) Boulevard Building-20 units.

(2) Administration Building-8 units.

(3) Purgatory Correctional Facility-2 units.

- All units to be changed out at Purgatory Correctional Facility will be wired into the existing control system by the Washington County Building Maintenance Department.
- All personnel working at Purgatory Correctional Facility are subject to background check and/or a urinalysis.

(4) Hurricane Senior Center-4 units.

b. Installation of 34 new RTU HVAC systems at the above locations.

- c. Provide all necessary duct changes where needed.
 - d. Wire in HVAC system and commission.
 - e. Provide all labor, supplies, and materials including crane to accomplish the above tasks.
 - f. Coordinate with the equipment supplier and the Washington County Building Maintenance Dept. for equipment and dates available for installations.
 - g. Dispose of replaced RTU.
2. **Equipment to be provided by the County.**
- a. All new HVAC equipment systems.
 - b. Curb adapters.
 - c. Economizers.
 - d. Electric heat strips.
3. **Compliance with Federal Statutes.**
- Contractor shall adhere to the Davis Bacon Act. Strict reporting by the Contractor is required.
 - Contractor shall adhere to the Buy American Act (Sections 10 (a-d) of Title 41 of the United States Code). The Buy American Act applies to all U.S. federal government agency purchases of goods valued over the micro purchase threshold, but does not apply to services. Under the Act, all goods for public use (articles, materials, or supplies) must be produced in the U.S. and manufactured items must be manufactured in the U.S. from U.S. materials.

4. **Start and Completion Dates.** Contractor may commence work after the equipment has been purchased and supplied to the Contractor. Contractor shall complete the items set forth in this Agreement on or before September 15, 2010.

5. **Change Orders.** The Contractor shall not perform any work on a proposed change that would result in a change in the Agreement price unless the County's representative has signed the appropriate change order document.

6. **Insurance.** Contractor shall be responsible for the proper protection of all personnel, materials and equipment stored on or off the County's property or incorporated into the work. The Contractor will also be responsible for all subcontractors who may be employed by the Contractor in performance of the proposed project. The insurance coverage provided by the Contractor shall include but not be limited to workman's compensation, comprehensive general liability and property damage. The Contractor shall submit certificates of insurance showing coverage amounts prior to commencing any work.

7. **Payment.** The County shall pay the Contractor the amount of \$18,000.00 for services and/or materials upon successful completion of the terms of this agreement. No advance payments will be made.

8. **Certification of Legal Work Status.** Contractor (a subcontractor of Contractor or contract employee of Contractor) shall certify that it does not and will not, during the performance of this contract, knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. Contractor agrees to produce, at the County's request, such documents which are required to verify compliance with applicable State and Federal laws. If the Contractor knowingly employs workers in violation of 8 USC § 1324a, such violation shall be cause of unilateral cancellation of the contract between Contractor and the County. In the

event this contract is terminated due to violation of 8 USC § 1324a by the Contractor or subcontractor of the contractor, the Contractor shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by the County as well as attorney fees.

GENERAL TERMS

9. **Authorization.** Each individual executing this Agreement does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she so signs.

10. **Utah Law to govern.** This Agreement has been drawn and executed in the State of Utah. All questions concerning the meaning and intention of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah.

11. **Recitals.** The Recitals contained in this Agreement are incorporated into the Agreement.

12. **Integration.** All agreements heretofore made in the negotiation and preparation of this Agreement between the parties hereto are superseded by and merged into this Agreement, no statement or representation not embodied herein shall have any binding effect upon the parties hereto and there shall be no amendments hereto except those in writing signed by the parties hereto.

13. **Time is of the essence.** Time is of the essence with regard to this Agreement as to each covenant, term, condition, representation, warranty and provision hereof.

14. **Number and gender.** The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this Agreement in accord with the manifest intention of the parties hereto. Likewise, if either the feminine, masculine or neuter gender should be one of

the other genders, it shall be so treated.

15. **Paragraph headings.** The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.

16. **Partial validity.** If any portion of this Agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:

- a. The remainder of this agreement shall be considered valid and operative, and,
- b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

17. **Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Agreement. Any waiver shall be in writing and signed by the waiving party.

18. **Necessary Acts and Cooperation.** The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.

19. **Ambiguities.** This agreement has been negotiated and drafted by all parties hereto and the general rule of contract construction that 'ambiguities shall be construed against the draftsman' shall have no application to this agreement.

20. **No Third Party Beneficiaries.** This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties, including but not limited to any customer of any party, and no such persons shall have any cause of action against any party for any failure by that party to make water available as provided in this Agreement, or for any breach or default by any party hereunder. In addition, no third parties shall have any rights hereunder that would,

in any way, restrict the parties' right to modify or renew this Agreement at any time or in any manner.

21. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

22. **Default.** Except as specifically provided for herein, a default by any Party in an obligation set forth herein shall not result in, or be the basis for, the termination or rescission of this Agreement.

23. **Independent Contractor.** Both parties hereto agree that the Contractor shall be deemed an independent contractor in the performance of this Agreement, and shall obtain and maintain all licenses, permits, and authority necessary to do business and render services under this Agreement and shall comply with all laws regarding unemployment insurance, disability insurance, and workmen's compensation. As such, the Contractor shall have no authorization, express or implied, to bind the County to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the County, except as expressly set forth herein. Compensation stated herein shall be the total amount payable to the Contractor by the County. Persons employed by the Contractor and acting under the direction of the Contractor shall not be deemed to be employees or agents of the County.

24. **Assignment.** No rights or obligations of the Contractor under this Agreement shall be assigned without the prior written consent of the County.

25. **Indemnity Clause.** Each party agrees to indemnify, save harmless, and release the other party and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury liability, suits, and proceedings arising out of the performance of this Agreement which are caused in whole or in part by the negligence of that party's officers, agents, volunteers,

or employees, but not for claims arising from the other party's sole negligence.

26. **Term.** This Agreement shall terminate on September 15, 2010. This Agreement may be terminated with cause by either party, in advance of the specified termination date, upon written notice being given to the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the Agreement may be terminated for cause. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

27. **Attorney's Fees and Costs.** In the event of a default in the performance of the terms and conditions of this agreement, the defaulting party agrees to pay all costs and expenses arising out of such default, including but not limited to reasonable attorney's fees.

WASHINGTON COUNTY

James J. Eardley, Chair
Washington County Commission

Attest:

Kim M. Hafen
Washington County Clerk/Auditor

CROFTS AIR CONDITIONING

By _____

Its _____

